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May 28, 1997

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BY HAND DELIVERY

Mr. William F. Caton
Secretary
Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington, D.C. 20554

Re: Notice of Ex Parte Communication in CC Docket 96-98 and CC Docket No. 97-137

Dear Mr. Caton:

On May 23, on behalf of WorldCom, Inc., I of Hogan & Hartson, LLP, Catherine Sloan and Richard Fruchterman of WorldCom, Inc., and Joseph Gillan of Gillan Associates, met with Richard Metzger, Paul Gallant, Lisa Gelb, Kalpak Gude, Jake Jennings, David Ellen and Florence Setzer, all of the Common Carrier Bureau, to discuss the common transport and access charge issues in the referenced CC Docket 96-98. We also met separately with John Nakahata, Jeffrey Lanning, and Tom Koutsky, all of the Competition Division of the General Counsel's Office. The attached handout contains the points made in our discussions.

We did not discuss the application of Ameritech in CC Docket No. 97-137, but to the extent the material in the attached handout is relevant to issues in that docket, we hereby include it in record for that docket.

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I have hereby submitted two copies of this notice and the enclosures for the referenced proceeding to the Secretary, as required by the Commission's rules. Please return a date-stamped copy of the enclosed (copy provided).

Please contact the undersigned if you have any questions.

Respectfully submitted,

Linda L. Oliver

Linda L. Oliver
Counsel for WorldCom, Inc.

Enclosure

cc: Richard Metzger
Paul Gallant
Lisa Gelb
Kalpak Gude
Jake Jennings
David Ellen
Florence Setzer
John Nakahata
Jeffrey Lanning
Tom Koutsky

Unbundled Local Switching, Local Transport, and Interexchange Access

WorldCom, Inc., Ex Parte Presentation

CC Docket 96-98

May 23, 1997

Ameritech Has Taken Positions on Unbundled Local Switching, Local Transport, and Interexchange Access That Violate the Act and the FCC's Rules

In its filings before the Illinois Commerce Commission and elsewhere (see attachment), Ameritech has defined the unbundled local switching (ULS) element in a manner that would deny requesting carriers the ability to function as local telephone companies, contrary to the Act and the FCC's rules:

- Ameritech would deny purchasers of unbundled local switching the ability to complete local calls over the Ameritech interoffice network.

- Ameritech would deny the purchaser of unbundled local switching the ability to function as the provider of interexchange access to the IXCs originating traffic from and terminating traffic to its local customers, unless the interexchange carrier establishes separate circuits (and therefore trunk ports) that can be used only to access ULS end users.

The FCC Must Issue an Order to Make it Clear that Ameritech's Position Violates the Act.

In WorldCom's view, the Act and the FCC's rules already make it clear that purchasers of unbundled local switching have the right to employ the Ameritech interoffice network on a cost-based, nondiscriminatory basis to complete local calls.

- Other incumbent LECs, such as NYNEX and Bell Atlantic, have made this form of interoffice transport available to purchasers of unbundled local switching.

The Act and FCC's rules also make it clear that the ULS purchaser is the sole provider of interexchange access, regardless of the method of transport chosen by the interexchange carrier to reach the ULS end office -- and that no access charges should be assessed to carriers that buy unbundled network elements (except for the temporary transition charge imposed by the FCC (now stayed), if upheld by Eighth Circuit).

- NYNEX and Bell Atlantic, for example, do not contest this characterization of the ULS purchaser.

WorldCom urges the FCC to issue an order *immediately* to clarify that Ameritech's position violates the Act and the FCC's rules.

- Ameritech's position has had the practical effect of eliminating unbundled local switching (and combined unbundled elements) as a viable local entry vehicle.

- The uncertainty that Ameritech's position is creating will slow the progress of Act implementation and local competition.

- Ameritech is refusing to create the necessary operational systems to support the platform configuration as the FCC defined it.

- The RBOCs need to know what is required of them under the Section 271 competitive checklist.

- Market-based access reform proposals depend upon the ability of interexchange carriers to become local service providers on the same terms as the incumbent LEC -- whether through cost-based unbundled elements in a platform configuration or in combination with other facilities -- and to function as interexchange access providers (to themselves and to other IXCs).

Ameritech Violates a Number of Principles Set Forth in the Act and in the FCC's Implementing Rules.

<u>Principle Number One</u>: **Network elements can be combined in any configuration. 47 U.S.C. § 251(c)(3); 47 C.F.R. § 51.315.**

Simply because an entrant may *choose* to obtain interoffice transport unbundled from local switching does not mean that switching and transport cannot be purchased in combination.

Network elements that are currently combined need not and should not be broken apart unless requested by the entrant. 47 C.F.R. § 51.315(b).

Local switching and interoffice facilities today are combined in Ameritech's network, both physically and logically through the routing tables in the switch. If an entrant desires both, Ameritech may not change the configuration except at the entrant's request.

<u>Principle Number Two</u>: **Interexchange carriers have the choice of transport arrangement and provider.**

Ameritech's view requires that if the ULS purchaser wants to be the provider of interexchange access, it must make the interexchange carrier change its transport arrangement, and obtain a separate transport arrangement that only serves the ULS purchasers' customers.

This tying of access transport to other components of switched access is directly contrary to the Commission's long-standing policy that transport may be obtained separately from these other access elements.

It also forces the ULS purchaser to make arrangements with every IXC for transport from the IXC's POP to each of the end offices in which the ULS purchaser has local customers.

<u>Principle Number Three</u>: The Act and the FCC's rules require that Ameritech share its scale economies with other entrants. August 8, 1996 Order in CC Docket 96-98 ("<u>Interconnection Order</u>") at para. 441.

> Ameritech's approach would force entrants to piece together their own separate, duplicative interoffice transmission networks for completion of local calls. As a result of this approach, the scale economies from Ameritech's inherited monopoly would be forever reserved to Ameritech because Ameritech would deny entrants the ability to use the existing Ameritech interoffice network in common with Ameritech's monopoly traffic.

<u>Principle Number Four</u>: The Act's definition of "unbundled network element" includes the functionality of a network component. 47 U.S.C. § 153(29).

> Ameritech's view that network elements can only be discrete network facilities is directly contradicted by the Act's definition of a network element. Network elements can include "functions of a facility," not just the facility itself.

<u>Principle Number Five:</u>. The FCC rules define the ULS element to include *all* the features and functionality of the local switch. 47 C.F.R. § 319(c)(i)(C).

> Among the "features and functionalities" of a local switch are the resident routing instructions. Ameritech's position denies the use of these routing tables to the entrant because the entrant may not use them to direct traffic to existing trunk groups.

<u>Principle Number Six</u>: The Act and the FCC's rules require incumbent LECs to provide requesting carriers with nondiscriminatory access to its facilities – that is, access that is equal to the access it provides its own services. 47 U.S.C. § 252(c)(3); <u>Interconnection Order</u> at para. 312.

> Ameritech clearly provides itself the use of its interoffice transport network to its own local end users and to interexchange carriers serving those end users. It must make that interoffice network equally available to all end users housed in that switch, whether they are Ameritech's own local customers or are served via unbundled switching.

<u>Principle Number Seven:</u> The FCC expressly rejected the concept of switch partitioning in its definition of the ULS network element. <u>Interconnection Order</u> at para. 416.

> Ameritech's definition of unbundled local switching *requires* that the ULS-carrier obtain line and trunk ports that are unique to the ULS-carrier's traffic (or shared with other ULS-carriers). This is a form of switch partitioning, which the Commission expressly rejected when it defined the ULS. It denies the ability of the ULS purchaser to use the local switch in the same way Ameritech does.

<u>Principle Number Eight</u>:. The Act and the FCC's rules define the ULS element to establish the ULS-purchaser as the exclusive provider of exchange access. 47 U.S.C.§ 252(d)(1); 47 C.F.R.§ § 51.307(c), 51.309(b); <u>Interconnection Order</u> at paras. 356-65.

> Under Ameritech's interpretation, the ULS-purchaser does not become the exclusive access provider for its subscribers unless the interexchange carrier chooses a new, and less efficient, transport configuration. Ameritech would deny to the ULS-purchaser the ability to self-provide and to offer to others the loop/switch elements of the carrier common line charge (CCLC), transport interconnection charge (TIC), and local switching.

<u>Principle Number Nine</u>: Network elements must be provided in a non-discriminatory fashion. 47 U.S.C. § 251(c)(3).

Ameritech permits carriers with their own switches to interconnect to interexchange carriers using transport circuits that carry both Ameritech and entrant traffic (for instance, facilities from a tandem to a POP where the entrant's end office subtends the Ameritech tandem). Refusing a similar ability to ULS-carriers is discriminatory.

<u>Principle Number Ten</u>: Denial to IXCs of the ability to reach all end users served by Ameritech's switches constitutes a termination of service without justification and without notice to interexchange carriers.

Ameritech's access tariff offers transport to all valid NXXs served at an end-office or tandem. ULS-purchasers' end users will retain the same valid NXXs and Ameritech has no right to terminate transport to the IXC serving these end users or to require that the IXC obtain separate access transport to these ULS end users.

What is the practical effect of the denial of access to the incumbent LEC's interoffice network?

- Requires entrants to engineer a separate, duplicate interoffice network before providing service to a single end user over unbundled local switching.
- Requires entrants to order and pay for customized routing within each end office switch
- Creates the potential for exhaust of customized routing capability well before the needs of entrants have been satisfied.
- Forces ULS purchasers to make separate arrangements with every IXC desiring to terminate traffic to or originate traffic from a ULS end user.
- Creates an effective barrier to local entry because only high volumes of traffic could even begin to warrant the use of dedicated interoffice facilities. Entrants are by definition low volume users.
- Makes it impossible even to test use of the platform configuration, because even a test would require the engineering of a separate interoffice network.
- Denies to entrants the efficiencies of the existing LEC interoffice network, and thereby artificially and unnecessarily raises the cost of competitive local service provision.

Attachment

Ameritech's Changing Position in Illinois

In the Section 271 proceeding in Illinois, Ameritech initially took the position that Ameritech, and not the purchaser of unbundled local switching, would function as the access provider whenever the interexchange carrier used the same Ameritech-provided switched transport between the ULS end office and the IXC point-of-presence (POP) that the IXC would use to reach Ameritech's local customers. 1/ In other words, in order for the ULS provider to function as the access provider for its own local customers, the interexchange carrier would have to make a separate arrangement with the ULS purchaser to take traffic from the IXC POP to the ULS end office.

Ameritech subsequently conceded in its briefs filed with the Hearing Examiner that the ULS purchaser should be considered the access provider. 2/ The Hearing Examiner issued a Proposed Order concluding that the ULS purchaser is the sole access provider for its local customers. 3/

1/ Rebuttal Testimony of Ameritech witness David H. Gebhardt, filed November 22, 1996, Illinois Commerce Commission Docket No. 96-0404 (Ameritech Ex. 1.1), at 51-52..

2/ Initial Brief of Ameritech in ICC Docket No. 96-0404, filed February 5, 1997, at 92; Reply Brief of Ameritech in ICC Docket No. 96-0404, February 19, at 60. Ameritech stated in its reply brief:

> Several of the IXCs continue to complain that they are not being given the opportunity to charge for terminating access. [citations omitted] This is no longer an issue. Ameritech has agreed to conform its treatment of originating and terminating access to provide IXCs with the opportunity they seek. (Am. Ill. Br., p. 92).

Reply Brief at 60.

3/ Hearing Examiner's Proposed Order, issued March 6, 1997, in ICC Docket No. 96-0404, at 41. The Hearing Examiner ruled that

> Ameritech's proposed ULS service should not require carriers to pay any originating and terminating access charges to Ameritech. Ameritech is simply not entitled to continue to collect interstate access charges since it is

Then, in recently filed supplemental testimony, Ameritech reverted to its original position. 4/ Ameritech's current position is as follows:

> For carriers subscribing to a ULS line port where an IXC terminates traffic using the switched access service provided by Ameritech Illinois (not through the ULS trunk port), the ULS tariff does not apply ULS switching charges to the ULS subscriber for the usage underlying terminating access calls. The IXC is purchasing tariffed switched access service from Ameritech Illinois which includes the switching function associated with this terminating access traffic, so Ameritech Illinois will continue to charge the IXCs for their terminating access service that it is providing pursuant to its tariffs. 5/

Ameritech acknowledged that these "rate applications" differed from Ameritech's earlier testimony and briefs. 6/

Throughout the Illinois Section 271 proceeding, Ameritech also has refused to offer nondiscriminatory, cost-based access to its interoffice transport network for completion of local calls by ULS end users. Instead, Ameritech requires the purchase of dedicated interoffice facilities for that purpose.

> not providing access to the end user through unbundled local switching.

Id.

4/ Supplemental Direct Testimony of David H. Gebhardt, filed April 4, 1997, in ICC Docket No. 96-0404, Ameritech Ex. 1.4, at 15-16.

5/ Id.

6/ Id.